

Chapter 8

Obligations & Process



8.17 Cancellation

Effects of cancellation

- 8.17.1 G A society's registration cannot be restored when it has been cancelled. There is no process of 're-registration'. Cancellation is a final, irreversible act.

- 8.17.2 G The Act states that if a society's registration is cancelled or suspended, it loses all the privileges of registration when the relevant notice is published in the London or Edinburgh Gazette.
[Note: <https://www.thegazette.co.uk/>]

- 8.17.3 G From the date of this publication, the society is no longer a corporate body. This means:
 - (1) it can no longer sue or be sued in its registered name;
 - (2) it can no longer hold property;
 - (3) members will no longer be entitled to limited liability for debts created by a continuing, unregistered and unincorporated, society on their behalf.

- 8.17.4 G In this case, the law on unregistered partnerships or unincorporated associations can decide how members are liable.

- 8.17.5 G Any liabilities generated by the society before registration is cancelled will not be affected by cancellation. This means creditors can take legal action against remaining members of the now unregistered society to recoup these debts.

- 8.17.6 G The society's rules decide what rights members have to get their capital returned and how any surplus will be distributed after the society has paid its debts. These rules should also be taken into account if a society is wound up or dissolved.

- 8.17.7 G The courts have suggested that cancellation, other than on the ground that the society no longer exists at all or that it existed for an illegal purpose, may simply end registration and its privileges. This may leave the

unregistered society as an unincorporated association, governed by its rules under contract law.

[Note: Boyle v Collins [2004] EWHC 271]

8.17.8 **G** After registration has been cancelled, we cannot get involved in the process of distributing the society's property. We cannot advise on property distribution or on the rights or liabilities of members at any stage.

8.17.9 **G** There is no equivalent to Part 31 of the Companies Act 2006, which allows a company to be restored the Register after it has been struck off by the Registrar of Companies.

8.17.10 **G** Any application by the same individuals to set up a society will be treated as an application to register a new society. Any new registration must be under a different name to the previous society, and the society will receive a new registration number.

Requesting to cancel

8.17.11 **G** We can cancel a society's registration on a number of grounds. We explain our powers to cancel a society's registration on RFCCBS 9.6. Here we deal with cancellation at the request of the society.

8.17.12 **G** We have to be satisfied that it is appropriate to cancel the society's registration. We will generally only do this if it:

- (1) has ceased to carry on any business;
- (2) has limited (e.g. less than £1000) assets or liabilities; and
- (3) is not insolvent.

8.17.13 **G** We take this approach to protect members and creditors, and to prevent societies using cancellation to avoid insolvency procedures.

8.17.14 **G** Societies need to complete a request to cancel form. The form asks for justifications for the cancellation. The information provided must satisfy us that it is appropriate to cancel the society's registration. We also:

- (1) ask for confirmation of how the decision to cancel the society's registration was reached. Generally, we would expect the decision to have been made by members at a general meeting. If this is not the case we will need to know why;
- (2) check whether all outstanding fees owed to us have been paid;

[Note: <http://www.fca.org.uk/your-fca/documents/forms/request-to-cancel-forms>]

- 8.17.15 **G** If the society's request follows a transfer of engagements to another society or a company, we can only cancel the society's registration after it sends us a 'relevant certificate' as defined in section 126 of the Act confirming that its property has all been transferred to those entitled to it.
- 8.17.16 **G** After we cancel a society's registration on this ground, we send out a formal acknowledgement. We place advertisements in the London or Edinburgh Gazette and in a local newspaper in the area in which the society's registered office was situated.
[Note: <https://www.thegazette.co.uk/>]
- 8.17.17 **G** There is no appeal to the courts against our decision to cancel a society's registration on this ground.